

AMENDMENT UNDER 37 C.F.R. § 1.116
U.S. Appl. No. 10/603,938
Atty. Docket No. Q71242

REMARKS

Claims 1-6, 8, 9 and 11-14 and 17-26 are all the claims pending in the application.

Claims 15 and 16 have been canceled without prejudice or disclaimer.

The Office Action includes two sets of rejections for each of the claims. The first set of rejections asserts that Crampton (WO 99/02424) includes a recovery dish or a concave recovery dish. The second set of rejections acknowledges that Crampton does not include a recovery dish, and attempts to correct this deficiency with Rehberger (U.S. Patent No. 2,069,048).

Examiner Interview

Applicants' representative conducted a telephone interview with the Examiner on December 19, 2006 and thanks the Examiner for the courtesies extended at that time. During the interview, the terms "concave" and "dish" were discussed as well as claim amendments for further distinguishing the claimed recovery dish from the Crampton spout. Claim 26 and the recitations recited therein were also discussed. Finally, the undersigned and the Examiner discussed motivation for modifying Crampton with Rehberger. During the discussion, the Examiner contended that even if Crampton lacked a recovery dish, that Crampton's deficiency would somehow serve as motivation for modifying Crampton.

Claim Rejections - Crampton

Claims 1, 8, 14-18, 23 and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Crampton et al. (WO 99/02424).

Claims 2-6, 11 and 19-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton in view of Hoyt (U.S. Patent No. 4,732,299).

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Claims 9, 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton in view of Provenza (WO 01/79073). Applicants respectfully traverse.

In each of these rejections, the Examiner asserts that the Crampton spout 8 constitutes the claimed concave recovery dish. As argued during the interview, the Crampton spout 8 is merely a hollow cylindrical tube, and is not a concave recovery dish and one of ordinary skill in the art would not consider the spout 8 a concave recovery dish. The Examiner appears to give the terms of the claim, for example “dish”, little or no weight. Yet, MPEP §2111 provides that the claims must be given their broadest *reasonable* interpretation *in light of the specification as it would be interpreted by one of ordinary skill in the art*. One of ordinary skill in the art interpreting the claims in light of the specification simply would not consider the Crampton spout 8 to be a concave recovery dish as claimed.

Furthermore, claim 1 now recites that the recovery dish extends outwardly from the orifice at a center of the bottom of the dish to a peripheral margin of the dish to form the concave shape of the dish, further distinguishing claim 1 from Crampton. For instance, since Crampton spout 8 is merely a hollow tube it does not have a bottom as claimed, but instead is hollow at the bottom. Also, it does not extend outwardly from a center of a bottom to a peripheral margin to form a concave shape. Accordingly, Crampton does not have a concave recovery dish as set forth in claim 1. Neither Hoyt nor Provenza are cited as teaching a concave recovery dish or correct the deficiencies of Crampton with respect to such a dish.

In view of the above, Applicants submit that claim 1 and its dependents are allowable over Crampton or the combination of Crampton and Hoyt or Crampton and Provenza. Claims 14

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and 19 are also allowable at least for reasons similar to claim 1 and the claims depending therefrom are allowable at least by virtue of their respective dependencies.

Furthermore, at least claim 26 is allowable for additional reasons. Claim 26 recites that the top rim of the recovery dish transitions into the actuating wall. For example, see the non-limiting embodiment as shown in Figs. 4 and 5 with concave recover dish 345. Claim 26 is further allowable at least because the top rim of the Crampton spout 8 does not transition into the alleged actuating wall.

Claim Rejections - Crampton and Rehberger

Claims 1, 8, 14-18, 23 and 24 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton in view of Rehberger (U.S. Patent No. 2,069,048).

Claims 2-6, 11 and 19-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton and Rehberger in view of Hoyt (U.S. Patent No. 4,732,299).

Claims 9, 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crampton and Rehberger in view of Provenza (WO 01/79073). Applicants respectfully traverse.

As discussed above, Crampton lacks a concave recovery dish as claimed. The Examiner attempts to correct this deficiency by modifying Crampton with the Rehberger bowl 15. However, one of ordinary skill in the art would not have been motivated to modify Crampton with Rehberger as suggested by the Examiner.

Crampton is directed to an anaerobic sealant or adhesive and Rehberger is directed to a large screwable lather bowl. There is no motivation for including the large lather bowl of Rehberger onto the Crampton adhesive container. If the Rehberger bowl were used with the

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Crampton adhesive container, adhesive dispensed from Crampton would stick to and harden in the bowl, rendering the bowl ruined after a single use. There is simply no motivation for such bowl that would be destroyed in a single use, especially since Rehberger envisions using the bowl multiple times (screwing it and unscrewing it to close and open the container).

Furthermore, it would not be reasonable to attach a large bowl onto the Crampton flexible pouch because it would render the pouch unstable. Because the pouch lacks sufficient rigidity to hold the bowl and the bowl would extend perpendicularly to the plane of the pouch, the structure would fall if the pouch was intended to hold the bowl (consider attempting to attach the Rehberger bowl 15 to the Crampton device of Fig. 4). Conversely, the bowl could not support the pouch for similar reasons.

Additionally, Crampton seeks to tightly house the pouch 3 in an outer container 9. The Rehberger bowl 15 would not fit in this container 9 (*see* Crampton Fig. 4). For all of these reasons, one of ordinary skill in the art would not have been motivated to modify Crampton with Rehberger.

As noted above, during the telephone, the Examiner contended that even if Crampton lacked a recovery dish that this would somehow serve as motivation for modifying Crampton to include a recovery dish. That is, the Examiner asserted that because Crampton is deficient with respect to the claimed recovery dish, one of ordinary skill in the art would have been motivated to add a recovery dish. Such an assertion is clearly improper and would effectively remove the motivation requirement entirely. Indeed, every primary reference in a rejection under 35 U.S.C. § 103 lacks the feature which it would allegedly be modified to include. Crampton

lacking a recovery dish as claimed is certainly not motivation for adding the claimed recovery dish. There must be motivation to combine the references and the prior art must suggest the desirability of the claimed invention (*see* MPEP §2143). In this case, the prior art does not suggest the desirability of the combination of Crampton and Rehberger and such a combination would not be desirable. Therefore, since there is no motivation for modifying Crampton with Rehberger, a *prima facie* case of obviousness has not been established.

Finally, the claimed recovery dish is made in one-piece integral construction with the dispensing piece. Even if the Rehberger bowl were attached to the Crampton device, there would be at least a two-piece construction with any dispensing piece.

Neither of the other cited references (Hoyt and Provenza) correct the deficiencies of the Rehberger and Crampton combination.

In view of the above, claims 1-6, 8, 9 and 11-14 and 17-26 are allowable over the combined teachings and suggestions of the references cited by the Examiner.

Furthermore, at least claim 26 is allowable for additional reasons. Claim 26 recites that the top rim of the recovery dish transitions into the actuating wall. For example, see the non-limiting embodiment as shown in Figs. 4 and 5 with concave recover dish 345. In contrast, a top rim of a device including the Rehberger bowl would not transition into any actuating wall as claimed.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

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Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.


Respectfully submitted,

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